

**WAC 197-11-970 Determination of nonsignificance (DNS).**

**DETERMINATION OF NONSIGNIFICANCE**

**Description of proposal:** Amendment of Chapter 173-360 of the Washington Administrative Code (WAC), Underground Storage Tank (UST) Regulations.

The purpose of this rule proposal is to implement changes to the state's UST program specified by the Legislature in 2007 in Substitute Senate Bill 5475, which amended chapter 90.76 RCW. The changes are necessary to comply with the new federal requirements in the Underground Storage Tank Compliance Act of 2005 (42 U.S.C. Sec. 15801 et seq., Energy Policy Act of 2005, P.L. 109-58, Title XV, subtitle B). The changes:

1. Authorize the Department of Ecology to prohibit the delivery of regulated substances to UST systems not in compliance with regulatory requirements;
2. Establish an operator training program for individuals who operate and maintain UST systems; and
3. Require secondary containment of tanks and pipes, and containment under dispenser systems.

**Proponent:** Washington State Department of Ecology, Toxics Cleanup Program

**Location of proposal, including street address, if any:** Regulated UST facilities throughout the State

**Lead agency:** Washington State Department of Ecology, Toxics Cleanup Program

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030 (2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

☐ There is no comment period for this DNS.

☐ This DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the DNS.

☒ This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below.  
**Comments must be submitted by May 4, 2012.**

**Responsible official:** Jim Pendowski

**Position/title:** Manager, Toxics Cleanup Program

**Contact:** Michael Feldcamp

**Address:** Department of Ecology  
Toxics Cleanup Program  
PO Box 47600  
Olympia, WA 98504-7600

**Phone:** (360) 407-7531

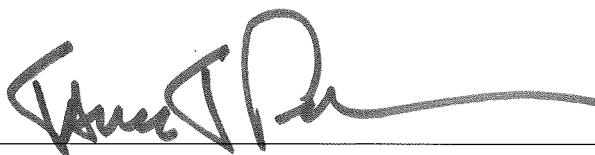
**Fax:** (360) 407-7154

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**Date**

3/15/12

**Signature**



**WAC 197-11-960 Environmental checklist.**

**ENVIRONMENTAL CHECKLIST**

*Purpose of checklist:*

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

*Instructions for applicants:*

This environmental checklist asks you to describe some basic information about your proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply." Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

*Use of checklist for nonproject proposals:*

Complete this checklist for nonproject proposals, even though questions may be answered "does not apply." IN ADDITION, complete the SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS (part D).

For nonproject actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

**A. BACKGROUND**

**1. Name of proposed project:**

Amendment of Chapter 173-360 of the Washington Administrative Code (WAC), Underground Storage Tank (UST) Regulations

**2. Name of applicant:**

Washington State Department of Ecology, Toxics Cleanup Program

**3. Address and phone number of applicant and contact person:**

Michael Feldcamp  
Department of Ecology  
Toxics Cleanup Program  
(360) 407-7531  
PO Box 47600  
Olympia, WA 98504-7600

**4. Date checklist prepared:**

March 12, 2012

**5. Agency requesting checklist:**

Washington State Department of Ecology

**6. Proposed timing or schedule:**

Ecology expects to adopt this rule no earlier than June 27, 2012. The rule would become effective 30 days after the date of adoption.

**7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.**

Before adopting the rule, Ecology will adopt an enforcement policy to implement the delivery prohibition provisions of the rule. Ecology will also track compliance with the new rule provisions. As necessary, Ecology will take enforcement actions against UST system owners and operators who violate the rule. Ecology may require retraining of operators or the development of operation and maintenance plans at non-compliant facilities.

**8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.**

A cost-benefit analysis has been conducted as part of the rule making process. This document includes information on the benefits associated with preventing releases of petroleum and other hazardous substances from underground storage tanks.

**9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.**

No. We are not aware of any state or local proposals on this issue. However, EPA has proposed revisions to the federal underground storage tank rule.

**10. List any government approvals or permits that will be needed for your proposal, if known.**

Adoption of the rule proposal must follow the procedures specified in the state Administrative Procedures Act, Chapter 34.05 RCW. As a significant legislative rule, Ecology must meet certain additional requirements, such as public notice and comment and preparation of a cost-benefit analysis.

To maintain federal grant funding, the rule proposal must be at least as stringent as the federal requirements in the Underground Storage Compliance Act of 2005 (42 U.S.C. Sec. 15801 et seq., Energy Policy Act of 2005, P.L. 109-58, Title XV, subtitle B). We worked closely with EPA throughout the rule-development process to ensure that our proposed rules complied with the minimum federal requirements. Based on those extensive consultations, EPA has confirmed that our rule proposal, as currently drafted, meets the minimum federal requirements. We plan on consulting with EPA before making any changes to the proposed rule based on public comments.

However, no other government approvals and no permits are required before Ecology can adopt the final rule.

**11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)**

The purpose of this rule proposal is to implement changes to the state's UST program specified by the Legislature in 2007 in Substitute Senate Bill 5475, which amended chapter 90.76 RCW. The changes are necessary to comply with the new federal requirements in the Underground Storage Tank Compliance Act of 2005 (42 U.S.C. Sec. 15801 et seq., Energy Policy Act of 2005, P.L. 109-58, Title XV, subtitle B). The changes:

1. Authorize Ecology to prohibit the delivery of regulated substances to UST systems not in compliance with regulatory requirements;
2. Establish an operator training program for individuals who operate and maintain UST systems; and
3. Require secondary containment of tanks and pipes, and containment under dispenser systems.

**12. Location of the proposal.** Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and

topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

The rule proposal applies to over 3,600 regulated UST facilities located throughout Washington State.

## **B. ENVIRONMENTAL ELEMENTS**

### **1. Earth**

- a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other . . . . .**

The proposal applies statewide; therefore, it will affect sites with all types of terrain.

- b. What is the steepest slope on the site (approximate percent slope)?**

The proposal applies statewide; therefore, it will affect sites with all types of elevations.

- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.**

The proposal applies statewide; therefore, it will affect sites with all types of soils.

- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.**

N/A

- e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.**

The proposed rule amendment applies statewide; therefore, the purpose, type and approximate quantities of any filling or grading is unknown, although some may occur as a result of these rule changes.

- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.**

It is possible that erosion may occur as a result of these rule changes due to construction, but not clearing. However, each project that occurs due to these rules is likely to require permits at the local level.

- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?**

N/A. This is a non-project proposal.

- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:**

Impacts to the earth due to avoided releases of hazardous substances stored and dispensed from UST systems are expected to diminish due to the proposed rule amendment.

### **2. Air**

- a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.**

Construction activities due to the proposed rule amendment may result in dust generation, and engine exhaust from

heavy equipment.

Use of double walled tanks and piping may reduce releases to soil and ground water and subsequent migration and/or accumulation of volatile substances in nearby buildings.

- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.**

N/A. This is a non-project proposal.

- c. Proposed measures to reduce or control emissions or other impacts to air, if any:**

Projects occurring due to the proposed rule amendment will need to comply with applicable state and local air quality requirements.

### **3. Water**

- a. Surface:**

- 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.**

The proposed rule amendment applies statewide; therefore, many sites affected by the rule could be in the immediate vicinity of surface water. In a December 2009 study, Ecology identified 30 leaking UST sites within 1/16 of a mile (330 feet) of a Puget Sound storm water drain. Many other UST systems are near streams, lakes, ponds, and wetlands. The proposed rule amendment is expected to enhance the effectiveness of the UST rule at preventing UST systems from leaking.

- 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.**

It is not anticipated there will be any work required over surface water as a result of the Proposal. However, it is possible that some UST system upgrade work could occur within 200 feet of surface water. Persons conducting such work would need to comply with local grading/construction requirements and with state water quality requirements (including, if applicable, construction storm water general permit requirements).

- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.**

No fill or dredge material is anticipated to be placed in or removed from surface waters or wetlands as a result of the proposed rule amendment.

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.**

No surface water withdrawals or diversions are anticipated as a result of the proposal.

- 5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.**

The proposed rule amendment applies statewide; therefore, many sites could be located within a 100-year floodplain.

- 6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.**

Construction activities occurring due to the proposed rule amendment could result in discharges to surface waters from erosion or other construction related activities; however, individual projects will likely be regulated at the local level (including, if applicable, construction storm water general permit requirements).

**b. Ground:**

- 1) Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known.**

No discharge to or withdrawal from ground water is anticipated due to the proposal.

- 2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: domestic sewage; industrial, containing the following chemicals. . . ; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.**

The proposed rule amendment will increase the effectiveness of the existing UST rule at preventing releases of hazardous substances from the UST systems to the environment. The rule and the proposed amendment apply statewide to 3,460 UST facilities, averaging three USTs per facility, each UST averaging 10,000 gallons in size. Based on a December 2009 Ecology study, there are 1,915 active leaking UST sites, and 368 are within one mile of a high susceptibility well, as defined by Washington Department of Health, Drinking Water Division. Also, the study reported 1,040 leaking UST sites within one mile of any well. Please see the attached Non-Project Review form, Part I, Section 5b for the study reference.

**c. Water runoff (including storm water):**

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.**

The proposed rule amendment does not affect existing storm water or other runoff rules, practices, or methods of collection and disposal; however, construction activities could occur as a result of the proposal, which in turn, could be a source of increase runoff.

- 2) Could waste materials enter ground or surface waters? If so, generally describe.**

Construction activities occurring due to the proposed rule amendment could result in discharges to ground or surface waters from erosion or other construction related activities; however, individual projects will likely be regulated at the local level (including, if applicable, construction storm water general permit requirements). The UST Rules exist to protect the environment from releases of hazardous substances, and the proposed rule amendment is expected to increase the level of protection.

**d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:**

The proposal will enhance the effectiveness of the existing rule, which protects the environment.

**4. Plants**

Activities occurring due to the proposed rule amendment are not likely to affect vegetation because any projects involve upgrading existing facilities, not building new ones.

**a. Check or circle types of vegetation found on the site:**

- deciduous tree: alder, maple, aspen, other
- evergreen tree: fir, cedar, pine, other
- shrubs
- grass
- pasture
- crop or grain
- wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other
- water plants: water lily, eelgrass, milfoil, other
- other types of vegetation

**b. What kind and amount of vegetation will be removed or altered?**

N/A. This is a non-project proposal.

**c. List threatened or endangered species known to be on or near the site.**

N/A. This is a non-project proposal.

**d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:**

N/A. This is a non-project proposal.

**5. Animals**

Activities occurring due to the proposed rule amendment are not likely to affect animals because any projects will be to upgrade existing facilities, not build new.

**a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site:**

birds: hawk, heron, eagle, songbirds, other:  
mammals: deer, bear, elk, beaver, other:  
fish: bass, salmon, trout, herring, shellfish, other:

N/A. This is a non-project proposal.

**b. List any threatened or endangered species known to be on or near the site.**

N/A. This is a non-project proposal.

**c. Is the site part of a migration route? If so, explain.**

N/A. This is a non-project proposal.

**d. Proposed measures to preserve or enhance wildlife, if any:**

N/A. This is a non-project proposal.

**6. Energy and natural resources**

- a. **What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.**

The proposed rule amendment applies statewide; therefore, projects occurring as a result of the proposed rules could use many kinds of energy. The energy would be used in construction activities and normal facility operations.

- b. **Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.**

No

- c. **What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:**

The rule proposal is needed to comply with new federal requirements adopted by Congress in the Underground Storage Compliance Act of 2005 (42 U.S.C. Sec. 15801 et seq., Energy Policy Act of 2005, P.L. 109-58, Title XV, subtitle B).

## **7. Environmental health**

- a. **Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste that could occur as a result of this proposal? If so, describe.**

Workers hired to upgrade facilities to comply with new requirements may be exposed; however, these workers are required by health and safety regulations to be trained to deal with this. Also, this is part of their normal employment anyway, regardless of these rule amendments.

Regarding spills, the proposed rule amendments require additional signs on emergency procedures. These new requirements are designed to reduce the likelihood and severity of spills.

- 1) **Describe special emergency services that might be required.**

No special emergency services will be required as a result of the proposal.

- 2) **Proposed measures to reduce or control environmental health hazards, if any:**

The existing UST rule controls and/or reduces environmental health hazards. As noted above, the use of double walled tanks will help prevent releases from UST systems that could pose health hazards associated with contaminated ground water and/or vapor intrusion.

## **b. Noise**

- 1) **What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?**

N/A. This is a non-project proposal.

- 2) **What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.**

N/A. This is a non-project proposal.

- 3) **Proposed measures to reduce or control noise impacts, if any:**

N/A. This is a non-project proposal.



## **8. Land and shoreline use**

### **a. What is the current use of the site and adjacent properties?**

Most sites affected by the proposal are fueling (gas station) facilities, which can be located in residential, commercial, industrial, or rural areas.

### **b. Has the site been used for agriculture? If so, describe.**

A small number of sites with regulated USTs are used for agriculture. However, the vast majority of systems are not associated with agricultural activities.

### **c. Describe any structures on the site.**

N/A. This is a non-project proposal.

### **d. Will any structures be demolished? If so, what?**

It is not anticipated that the proposal will require the demolition of structures.

### **e. What is the current zoning classification of the site?**

N/A. This is a non-project proposal.

### **f. What is the current comprehensive plan designation of the site?**

N/A. This is a non-project proposal.

### **g. If applicable, what is the current shoreline master program designation of the site?**

N/A. This is a non-project proposal.

### **h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.**

N/A. This is a non-project proposal.

### **i. Approximately how many people would reside or work in the completed project?**

N/A. This is a non-project proposal.

### **j. Approximately how many people would the completed project displace?**

No displacement of people is anticipated due to the proposal.

### **k. Proposed measures to avoid or reduce displacement impacts, if any:**

N/A. This is a non-project proposal.

### **l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:**

N/A. This is a non-project proposal.

## **9. Housing**

### **a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.**

N/A. No housing units are provided with this proposal or the rule.

- b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.**

N/A. This is a non-project proposal.

- c. Proposed measures to reduce or control housing impacts, if any:**

N/A. This is a non-project proposal.

#### **10. Aesthetics**

- a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?**

N/A. This is a non-project proposal.

- b. What views in the immediate vicinity would be altered or obstructed?**

N/A. This is a non-project proposal.

- c. Proposed measures to reduce or control aesthetic impacts, if any:**

N/A. This is a non-project proposal.

#### **11. Light and glare**

- a. What type of light or glare will the proposal produce? What time of day would it mainly occur?**

Activities occurring as a result of the proposal would usually occur during normal construction hours. Construction activities would normally be regulated locally.

- b. Could light or glare from the finished project be a safety hazard or interfere with views?**

No

- c. What existing off-site sources of light or glare may affect your proposal?**

N/A. This is a non-project proposal.

- d. Proposed measures to reduce or control light and glare impacts, if any:**

N/A. This is a non-project proposal.

#### **12. Recreation**

- a. What designated and informal recreational opportunities are in the immediate vicinity?**

N/A. This is a non-project proposal.

- b. Would the proposed project displace any existing recreational uses? If so, describe.**

No

- c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:**

N/A. This is a non-project proposal.

### **13. Historic and cultural preservation**

- a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.

No

- b. Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.

N/A. This is a non-project proposal.

- c. Proposed measures to reduce or control impacts, if any:

N/A. This is a non-project proposal.

### **14. Transportation**

- a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.

The proposed rule amendment applies statewide. The sites affected by the proposal are almost always served by public streets and highways, but the proposal is not anticipated to alter the current use of these roadways in any substantial manner.

- b. Is site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?

Some sites affected by the proposed rule amendment would be served by transit, and the distance to the nearest stop would vary.

- c. How many parking spaces would the completed project have? How many would the project eliminate?

N/A. This is a non-project proposal.

- d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).

No

- e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

No

- f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.

N/A. This is a non-project proposal.

- g. Proposed measures to reduce or control transportation impacts, if any:

N/A. This is a non-project proposal.

### **15. Public services**

- a. **Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.**

No

- b. **Proposed measures to reduce or control direct impacts on public services, if any.**

N/A. This is a non-project proposal.

## 16. Utilities

- a. **Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.**

The proposed rule amendment applies statewide. The sites affected by the proposal are served by a variety of utilities, which includes all of the named utilities. The proposal is not anticipated to alter the current use of these in any substantial manner.

- b. **Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.**

N/A. This is a non-project proposal.

## C. SUPPLEMENTAL SHEET FOR NONPROJECT ACTIONS

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. **How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?**

The proposed rule amendment is not likely to increase discharges. The intent of the rule amendment is to decrease discharges to the environment from USTs. Some construction activities could occur as a result of the proposed regulations, likely to be regulated at the local level by project as they occur (including, if applicable, construction storm water general permit requirements).

**Proposed measures to avoid or reduce such increases are:**

The proposed rule amendment will make changes that avoid or reduce releases of hazardous substances to the environment. These changes include:

- Requirements for operator training.
- Requirements that prohibit fuel delivery to tanks that are not in compliance with UST rule requirements.
- Requirements for secondary containment and interstitial monitoring for new or replacement UST system components (double walled tanks and piping, and under dispenser containment sumps).

2. **How would the proposal be likely to affect plants, animals, fish, or marine life?**

The proposal is likely to be beneficial to the environment.

**Proposed measures to protect or conserve plants, animals, fish, or marine life are:**

The proposed rule amendment will make changes that avoid or reduce releases of hazardous substances to the environment, which in turn could protect or conserve plants, animals, fish, or marine life.

**3. How would the proposal be likely to deplete energy or natural resources?**

The proposal is not likely to deplete energy or natural resources.

**Proposed measures to protect or conserve energy and natural resources are:**

N/A

**4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?**

The proposal would likely be beneficial to sensitive areas or areas designated (or eligible or under study) for governmental protection, if such areas are near an underground storage tank facility where a release of a hazardous substance to the environment was prevented by the proposed rule amendments.

**Proposed measures to protect such resources or to avoid or reduce impacts are:**

The proposed rule amendment will make changes that avoid or reduce releases of hazardous substances to the environment.

**5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?**

The proposal would not be likely to affect land and shoreline use, nor would it allow or encourage land or shoreline uses incompatible with existing plans.

**Proposed measures to avoid or reduce shoreline and land use impacts are:**

N/A

**6. How would the proposal be likely to increase demands on transportation or public services and utilities?**

The proposal would not be likely to increase demands on transportation or public services and utilities.

**Proposed measures to reduce or respond to such demand(s) are:**

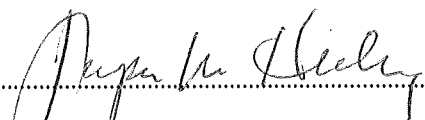
N/A.

**7. Identify, if possible, whether the proposal may conflict with local, state, or federal laws or requirements for the protection of the environment.**

The proposal is a state rule amendment and would not conflict with local or federal laws or requirements for the protection of the environment.

**D. SIGNATURE**

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: 

Date Submitted: 3/15/2012

## **SEPA Nonproject Review Form**

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. The Nonproject Review Form (NPRF) is an optional tool to help the lead agency evaluate the environmental consequences of a nonproject proposal and to provide information to decision-makers and the public.

The NPRF cannot be used as a substitute for the environmental checklist, but may be attached as supplemental analysis. Applicable information in the NPRF can be referenced in the environmental checklist without having to repeat the information.

The NPRF is intended to be used concurrently with the development of a nonproject proposal. To achieve maximum effectiveness and efficiency the initial use of the form should begin at the time a nonproject proposal is being contemplated, i.e. upon identification that a plan, policy or rule is likely to be needed or is mandated.

The information and analysis in the NPRF should be updated as the proposal is developed. The number of revisions will depend on the complexity of the proposal. If the proposal is minor, one iteration of the NPRF may be sufficient. For more complex proposals, the NPRF should be revised as analysis is completed or key issues resolved.

If you are unfamiliar with the form, you should review all of the questions before providing any answers. This will help familiarize you with the questions and should avoid duplication of information. Please note that when a nonproject proposal is first contemplated, it is often premature to respond to some questions in the NPRF. Answers may also change as the proposal is developed and analysis is completed.

## NONPROJECT REVIEW FORM

COMPLETED BY: Joe Hickey

DATE: March 12, 2012

### PART I - FRAMEWORK

#### 1) Background

##### a) Name of proposal, if any, and brief description.

Amendment of Chapter 173-360 of the Washington Administrative Code (WAC), Underground Storage Tank (UST) Regulations.

The purpose of this rule proposal is to implement changes to the state's UST program specified by the Legislature in 2007 in Substitute Senate Bill 5475, which amended chapter 90.76 RCW. The changes are necessary to comply with the new federal requirements in the Underground Storage Tank Compliance Act of 2005 (42 U.S.C. Sec. 15801 et seq., Energy Policy Act of 2005, P.L. 109-58, Title XV, subtitle B). The changes:

1. Authorize the Department of Ecology to prohibit the delivery of regulated substances to UST systems not in compliance with regulatory requirements;
2. Establish an operator training program for individuals who operate and maintain UST systems; and
3. Require secondary containment of tanks and pipes, and containment under dispenser systems.

##### b) Agency and contact name, address, telephone, fax, email

**Contact:** Michael Feldcamp

**Address:** Department of Ecology  
Toxics Cleanup Program  
PO Box 47600  
Olympia, WA 98504-7600

**Phone:** (360) 407-7531

**Fax:** (360) 407-7154

**Email:** [USTrule@ecy.wa.gov](mailto:USTrule@ecy.wa.gov)

##### c) Designated responsible official

Jim Pendowski  
Manager, Toxics Cleanup Program  
Washington Department of Ecology.

##### d) Describe the planning process schedule/timeline

Ecology expects to adopt this rule no earlier than June 27, 2012. The rule would become effective 30 days after the date of adoption.

##### e) Location - Describe the jurisdiction or area where the proposal is applicable.

The rule proposal applies to over 3,600 regulated UST facilities located throughout Washington State.

##### f) What is the legal authority for the proposal?

Chapter 90.76 of the Revised Code of Washington (RCW), Underground Storage Tanks



**g) Identify any other future nonproject actions believed necessary to achieve the objectives of this action.**

Before adopting the rule, Ecology will adopt an enforcement policy to implement the delivery prohibition provisions of the rule. Ecology will also track compliance with the new rule provisions. As necessary, Ecology will take enforcement actions against UST system owners and operators who violate the rule. Ecology may require retraining of operators or the development of operation and maintenance plans at non-compliant facilities.

**2) Need and Objectives**

**a) Describe the need for the action.** (Whenever possible this should identify the broad or fundamental problem or opportunity that is to be addressed, rather than a legislative or other directive.)

This rule proposal is necessary to:

1. Comply with the legislative directive in Substitute Senate Bill 5475 (2007) to adopt rules that are consistent with and no less stringent than the requirements in the Underground Storage Tank Compliance Act of 2005;
2. Maintain federal funding for our state UST program. Such funding is contingent on state compliance with the requirements in the Underground Storage Tank Compliance Act of 2005; and
3. Reduce the number and severity of releases from regulated UST systems in this state, which pose a serious threat to human health and the environment, including drinking water.

**b) Describe the objective(s) of the proposal, including any secondary objectives which may be used to shape or choose among alternatives.**

The purpose of this rule proposal is to implement changes to the state's UST program specified by the Legislature in 2007 in Substitute Senate Bill 5475, which amended chapter 90.76 RCW. The changes are necessary to comply with the new federal requirements in the Underground Storage Tank Compliance Act of 2005 (42 U.S.C. Sec. 15801 et seq., Energy Policy Act of 2005, P.L. 109-58, Title XV, subtitle B). The changes:

1. Authorize the Department of Ecology to prohibit the delivery of regulated substances to UST systems not in compliance with regulatory requirements;
2. Establish an operator training program for individuals who operate and maintain UST systems; and
3. Require secondary containment of tanks and pipes, and containment under dispenser systems.

**c) Identify any assumptions or constraints, including legal mandates, which limit the approach or strategy to be taken in pursuing the objective(s).**

The changes are necessary to comply with the new federal requirements in the Underground Storage Tank Compliance Act of 2005 (42 U.S.C. Sec. 15801 et seq., Energy Policy Act of 2005, P.L. 109-58, Title XV, subtitle B). Additionally, the state legislature has required in chapter 90.76 RCW that our state rules be at least as stringent as the federal requirements.

**d) If there is no legislative or other mandate that requires a particular approach, describe what approaches could reasonably achieve the objective(s).**

As noted above, Ecology is proposing revisions to the UST rules in order to comply with requirements in state and federal laws. Ecology has consulted with EPA and determined that the Ecology rule proposal is consistent with the federal law and EPA's proposed rule revisions.

**3) Environmental Overview**

Describe in broad terms how achieving the objective(s) would direct or encourage physical changes to the environment. Include the type and degree of likely changes such as the likely changes in development and/or infrastructure, or changes to how an area will be managed.

The proposed rule amendment applies statewide, as does the existing UST Rule. The UST Rule is designed to prevent releases of hazardous substances to the environment. The proposed rule amendment will enhance environmental

protection by establishing new requirements for secondary containment, delivery prohibition and operator training.

Some UST facility upgrades would occur as a result of the proposed rule amendment, which in turn would generate construction activity, likely regulated at the local level.

#### 4) Regulatory Framework

##### a) Describe the existing regulatory/planning framework as it may influence or direct the proposal.

In the mid-1980's, Congress passed a series of laws intended to protect human health and the environment by regulating USTs containing petroleum and other hazardous substances. In 1988, EPA adopted regulations establishing a federal UST program and minimum requirements for delegating federal authority to states.

In 1989, the Washington State legislature passed an Act requiring the Department of Ecology to establish an UST program that, at a minimum, meets the requirements for delegation of the federal UST program and is consistent with and no less stringent than the requirements in the federal regulations (chapter 90.76 RCW).

In 1990, Ecology adopted regulations establishing a state UST program pursuant to the legislature's direction (chapter 173-360 WAC). In 1993, EPA approved Washington State's UST program. Washington State was one of the first states in the nation to be granted state program approval for compliance and enforcement. In 1991, 1995, and 1998, Ecology made several minor revisions to the UST regulations, mostly governing the administration of the program (such as compliance tags and tanks fees).

In 2005, United States Congress passed and President Bush signed into law the Federal Energy Act. The Act included new requirements for federal and delegated state UST programs. In 2007, the Washington State legislature amended chapter 90.76 RCW to incorporate changes required under the Federal Energy Act of 2005. The current rulemaking process is designed to comply with changes to state and federal laws.

This non-project proposal is an amendment to UST Rule 173-360 WAC. All procedures and requirements for amending regulations are followed, including public notice and comment.

##### b) Identify any potential impacts from the proposal that have been previously designated as acceptable under the Growth Management Act (GMA), chapter 36.70A RCW.

N/A

#### 5) Related Documentation

##### a) Briefly describe any existing regulation, policy or plan that is expected to be replaced or amended as a result of the proposal. (Adequate descriptions in section 4.a may be referenced here, rather than repeated.)

This non-project proposal is an amendment to UST Rule 173-360 WAC.

##### b) List any environmental documents (SEPA or NEPA) that have been prepared for items listed in 4.a. or that provide analysis relevant to this proposal. Note: Impacts with previous adequate analysis need not be re-analyzed, but should be adopted or incorporated by reference into the NPRF. Identify the:

- i) Type of document
- ii) Lead agency and issue date
- iii) Where copies can be viewed or obtained
- iv) The portions of the document applicable to the current proposal and briefly explain relevancy. Summarize the relevant impact assessment or, provide reference to discussion(s) in Part II that includes this information.

A SEPA Environmental Checklist has been prepared and will accompany this Non-Project Review Form. The lead agency is the Washington Department of Ecology. The issue date is March 7, 2012, the date of the CR-102 filing. The document can be viewed on the SEPA Register, and copies can be obtained from Ecology as well.

A document titled "Leaking Underground Storage Tank (LUST) Sites Near Sensitive Wellheads" provided analysis relevant to this proposal. The document is a study authored by Charles San Juan, a Hydrogeologist with Ecology, dated December 2009, published in January 2010, Publication Number 09-09-048.

- c) **List other relevant environmental documents/studies/models which have been identified as necessary to support decision making for this proposal.**

A cost-benefit analysis has been conducted as part of the rule making process. This document includes information on the benefits associated with preventing releases of petroleum and other hazardous substances from underground storage tanks.

**6) Public Involvement (Optional)**

- a) **Identify agencies with jurisdiction or expertise, affected tribes, and other known stakeholder groups whose input is likely to be specifically solicited in the development of this proposal.**

Ecology has consulted with the Washington Oil Marketers Association, corporate and individual UST owners and operators, and other interested parties during the rule development process. We will continue solicit their comments on the rule proposal and implementation issues.

- b) **Briefly describe the processes used or expected to be used for soliciting input from those listed. [Examples: ad hoc committees, tribal consultations, interagency meetings, public workshops or hearings, newsletters, etc.]**

Public meetings and mailings, as well as notices in Ecology's Site and SEPA Registers have been and continue to be part of this process.

## **PART II – IMPACT ANALYSIS AND ALTERNATIVES**

**7) Affected Environment**

Generally describe the existing environmental landscapes or elements (e.g., character and quality of ecosystem, existing trends, infrastructure, service levels, etc.) likely to be affected if the proposal is implemented. Include a description of the existing built and natural environment where future "on the ground" activities would occur that would be influenced by the nonproject proposal.

**Note:** When complete, this section needs to provide information on existing conditions for the elements of the environment discussed in sections 8 and 9. A list of both the built and the natural elements of the environment is found in WAC 197-11-444, and included at the end of this form.

The proposed rule amendment applies statewide, so the existing environmental landscapes and/or elements are varied; however, no significant changes will occur as a result of the proposal. The character and quality of ecosystems, infrastructure, and service levels will remain the same or improve due to new regulatory requirements designed to prevent releases of hazardous substances from USTs.

**8) Key Issue Assessment**

List the identified key issues or areas of controversy or concern and include a brief statement of why each is a key issue. For each item listed:

- a) Identify alternative options or solutions for the objective or concern.
- b) Describe the environmental considerations/impacts relevant to each of the alternatives identified in 8.a.
- c) Describe reasonable mitigation of adverse impacts identified.
- d) Identify those alternatives to be carried forward for further analysis.
- e) Briefly describe why those alternatives rejected from further consideration were not carried forward.

Ecology originally planned to propose much more comprehensive revisions to the UST rule. However, EPA has not completed their process to update the federal UST and Ecology elected to defer addressing other issues until after the federal rule amendments are adopted.

The proposed rule revisions are designed to comply with minimum requirements in the federal law and grant guidelines that states must adopt by August 2012. Consequently, we do not have as much discretion in establishing rule requirements (relative to other Ecology rules).

Issues that might arise during the public comment period include:

- Compliance date for operator training: Operators will be required to comply with the training requirements by December 31, 2012. Although less stringent than federal guidelines, EPA has stated that they are comfortable with this approach.
- Annual retraining of Class C Operators: Class C operators must receive annual retraining. This is more stringent than federal requirements, but will impose minimal costs.
- Operation and maintenance (O&M) plans: Owners and operators may be required to prepare an O&M plan for non-compliant UST systems, either in place of or in addition to retraining of Class A and Class B operators. This is more stringent than federal requirements. However, we are providing a low-cost on-line option (WATOT) for preparing these plans.
- Emergency signage: Owners will be required to post signs identifying emergency procedures and contact information. Some stations must already include such signage under the State Building Code. Costs are minimal and imposed only once.
- Allowed methods of secondary containment: The federal requirements establish performance standards, not methods. Under our rule proposal, tanks and piping must be secondarily contained using double-walled construction. Other methods, such as external liners, are not allowed.
- Applicability of under-dispenser containment (UDC): The federal requirements only require UDC when an entire dispenser system is installed or replaced. We chose to increase the phase-in rate by also making it applicable when just the dispenser (as opposed to the entire dispenser system) is replaced and when the underground piping connected to an existing dispenser system is replaced.

## 9) Proposed Nonproject Action or Alternative Actions

Describe a range of reasonable alternatives or the preferred alternative that will meet the objective(s). For each alternative, answer the following questions referring again to the list of the elements of the environment in WAC 197-11-444:

No alternative except the preferred alternative of the proposed rule amendment exists that is feasible and would meet the core objective. We considered addressing a more comprehensive range of issues. However, we concluded we would be unable to collect the necessary information and prepare the necessary rule language and economic analyses prior to the August 2012 federal deadline

- a) **If this alternative were fully implemented (including full build-out development, redevelopment, changes in land use, density of uses, management practices, etc.), describe where and how it would direct or encourage demand on or changes within elements of the human or built environment, as well as the likely affects on the natural environment. Identify where the change or affect or increased demand constitutes a likely adverse impact, and describe any further or additional adverse impacts that are likely to occur as a result of those changes and affects.**

Upgrade requirements in the proposed rule amendment are likely to result in construction related activities at UST facilities which may temporarily adversely impact the local environment. Specifically, dust, noise, potential runoff and erosion issues may occur; however, these activities are typical of construction type activities and are regulated through state and local permitting processes (such as the water quality permitting, local fill and grading permits, notice of construction reviews by local air authorities).

- b) **Identify potential mitigation measures for the adverse impacts identified in 9.a and describe how effective the mitigation is assumed to be, any adverse impacts that could result from the use of the mitigation, and any conflict or concern related to the proposal objectives and/or key issues identified.**

The state and local permitting processes applicable to construction activities establish requirements/mitigation measures that prevent/minimize adverse impacts on the environment. These mitigation measures could include limited hours of operation of heavy equipment, runoff control, dust suppression, etc. No conflicts are anticipated.

**c) Identify unavoidable impacts and those that will be left to be addressed at the project level.**

There may be some unavoidable impacts occurring as a result of the proposed rule amendment due to construction activities when upgrading facilities; however, these activities are regulated through current state and local permitting processes.

**d) Describe how the proposal objectives will or will not be met if the impacts described in 9.c were to occur.**

Since the impacts of construction activities are unavoidable and necessary to meet the requirements of the proposed rule amendment, the objectives will be met.

**Note:** Alternatives may be rejected at any point in the process if: they have no environmental benefit, are not within existing authority, are determined unfeasible, or do not meet the core objectives.

### **PART III – IMPLEMENTATION CONSIDERATIONS**

**10) Consistency of the proposal with other plans, policies and laws.**

- a) Internal consistency** - If there are internal inconsistencies between this proposal and your agency's previously adopted or ongoing plans and regulations, identify any strategies or ideas for resolving these inconsistencies.

Under state law, Ecology is required to prepare an implementation plan for implementing all new rules or rule revisions. We do not anticipate any internal inconsistencies between proposed rule amendment and current practices. However, we will resolve any inconsistencies when preparing the rule implementation plan.

- b) External consistency** - If there are external inconsistencies between this proposal and adopted or ongoing plans and regulations of adjacent jurisdictions and/or other agencies, identify any strategies or ideas for resolving these inconsistencies.

The proposed rule amendments do not conflict with other requirements applicable to these activities. However, the proposed rule amendment applies statewide and local jurisdictions are allowed to implement more stringent requirements. If any inconsistencies are identified during the public comment period, Ecology will resolve those when preparing the final rule and the rule implementation plan.

**11) Monitoring and Follow-up**

- a) Describe any monitoring that will occur to ensure the impacts were as predicted and that mitigation is effective, including responsible party, timing, and method(s) to be used.**

Inspection of UST facilities for compliance with state UST regulations occurs on a three year cycle, or as needed. Ecology is responsible for these inspections, having a UST program delegated by EPA. EPA also conducts a limited number of UST facility inspections.

- b) Identify any plans or strategies for updating this proposed action based on deviation from impact projections or other criteria.**

There are no plans to deviate from this proposed action.